

Message Text

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PAGE 01 CALCUT 00869 080635Z

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ACTION NEA-10

INFO OCT-01 EB-07 ISO-00 /018 W
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R 080442Z APR 76
FM AMCONSUL CALCUTTA
TO USDOC WASHDC
AMEMBASSY KATHMANDU
INFO AMEMBASSY NEW DELHI
AMCONSUL HONG KONG
SECSTATE WASHDC 5284

UNCLAS CALCUTTA 0869

E.O. 11652: N/A
TAGS: BDIS, IN
SUBJ: TRANSHIPMENT OF ARTIFACTS FROM NEPAL

REF: HONG KONG 2087, CALCUTTA 617, CALCUTTA 643 (REPEATING
HONG KONG 2087 TO NEW DELHI & KATHMANDU AS INFO)
10 FAM 980

1. IN FEBRUARY CONGEN HONG KONG REPORTED REQUEST BY A U.S. BUSINESSMAN, MR. RICHARD KNAPP, FOR ASSISTANCE IN CLEARING THROUGH THE CALCUTTA PORT SIX CASES OF ARTIFACTS AND HANDICRAFTS PURCHASED IN NEPAL FOR US \$6000 (HONG KONG 2087). OUR INQUIRY REVEALED THAT SHIPMENT WAS BEING HELD UP FOR SCRUTINY BY INDIAN MUSEUM ARCHAEOLOGICAL DEPARTMENT WHICH WOULD HAVE TO CERTIFY THAT ARTIFACTS THEREIN WERE NOT "ANTIQUES", I.E. MORE THAN ONE HUNDRED YEARS OLD. THIS WAS DONE DESPITE FACT THAT THE SHIPMENT WAS CERTIFIED FOR EXPORT BY THE GOVERNMENT OF NEPAL, AND THE ARTIFACTS WERE CERTIFIED AS BEING OF NAPALI ORIGIN.

2. IN EARLY MARCH, INDIAN MUSEUM ARCHAEOLOGICAL DEPARTMENT SIX-MAN COMMITTEE IN CALCUTTA DETERMINED THAT FIVE OF THE METAL STATUES CONTAINED IN THE SIX CASES OF ARTIFACTS AND HANDICRAFTS PURCHASED IN NEPAL BY MR. KNAPP WERE INDEED ANTIQUES WITHIN THE GOI DEFINITION (ANY ITEM WHOSE AGE IS 100 YEARS OR OLDER). WE ARE TOLD THAT DEPUTY SUPERINTENDING
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PAGE 02 CALCUT 00869 080635Z

ARCHAEOLOGIST OF THE MUSEUM'S ARCHAEOLOGICAL SURVEY OFFICE

MR. SACHIN S. BISWAS IN CALCUTTA WROTE TO DIRECTOR GENERAL OF GOI'S ARCHAEOLOGICAL SURVEY OFFICE IN NEW DELHI REQUESTING THAT HE APPOINT A HIGH-LEVEL COMMITTEE TO DETERMINE IF THESE FIVE STATUES SHOULD BE CONFISCATED BY THE GOI. THIS COMMITTEE IS SUPPOSED TO MEET "SOMETIME IN APRIL". WE UNDERSTAND FROM MR. B. M. PUROHIT, MANAGING DIRECTOR OF INDO-FOREIGN AGENTS, CALCUTTA, CLEARING AGENT FOR KNAPP'S KATHMANDU SHIPPER, THAT ON MARCH 29 HE CLEARED THE REST OF THE SHIPMENT, MINUS THE FIVE STATUES, AND HOPES TO SHIP THE CONSIGNMENT TO THE U.S. IN THE EARLY PART OF APRIL.

3. ON MARCH 22 CALCUTTA CONGEN ECONOMIC/COMMERCIAL OFFICER AND COMMERCIAL ASSISTANT INTERVIEWED PCAPALESE CONSULATE COMMERCIAL ATTACHE J.B. RAJBHANDARI REGARDING THE INDO-NEPAL TRADE AGREEMENT AND TRANSIT PROCEDURES WITH RESPECT TO ANTIQUES OF NEPALESE ORIGIN. MR. RAJBHANDARI ADAMANTLY STATED THAT UNDER THIS TREATY, GOI CUSTOMS HAS NO AUTHORITY TO OPEN, CHECK, OR HOLD UP FOR SCRUTINY ANY NEPALESE GOODS TRANSITING INDIA UNDER AS SIGNED NEPALESE CUSTOMS TRANSACTION DECLARATION (CTD) FORM. ACCORDING TO RAJBHANDARI THE TREATY ALLOWS INDIAN CUSTOMS TO CHECK TRANSIT CONSIGNMENTS ONLY IF THEY SUSPECT PILFERAGE, BROKEN SEALS OR TAMPERING. RAJBHANDARI SAID NEPALESE GOVERNMENT HAS MADE SEVERAL REPRESENTATIONS TO US ABOUT INTERFERENCE OF TYPE WHICH OCCURED IN CASE OF KNAPP SHIPMENT (WHICH HE SAID WAS FREQUENT), BUT TO NO AVAIL.

4. CONGEN ECON/COMMERCIAL OFFICER AND COMMERCIAL ASSISTANT THEN CALLED ON MR. S.C MATHUR, ASSISTANT COLLECTOR, NEPAL SECTION, CUSTOMS HOUSE, CALCUTTA, ON MARCH 25, WHO SAID INDIAN CUSTOMS EXERCISES "DISCRETIONARY POWERS" CONCERNING NEPALESE GOODS TRANSITING INDIA. WHEN IT WAS SUGGESTED THAT THERE WAS NO AUTHORITY FOR THIS IN PARAGRAPH TEN OF THE INDO-NEPAL TRADE AGREEMENT--THE PARAGRAPH EARLIER CITED TO US BY CALCUTTA OFFICIALS AS BASIS FOR EXERCISING DISCRETIONARY AUTHORITY - MR. MATHUR ADMITED THERE WAS NOT, BUT EXPLAINED THAT THE GOI CUSTOMS ACT OF 1962, WHICH CONTAINS THE PROSCRIPTION AGAINST EXPORTING ANTIQUES FROM INDIA, GIVES SUCH AUTHORITY. IN THIS RESPECT, MATHUR STATED THAT THE GOI DOES NOT ACCEPT NEPALESE GOVERNMENT CTDS.

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PAGE 03 CALCUT 00869 080635Z

5. MATHUR LEFT US WITH THE IMPRESSION THAT THIS APPLIED ONLY TO INDIAN OR NEPALESE ORIGINATED ANTIQUES. HOWEVER, IN A MEETING WITH MR. BISWAS OF THE GOI ARCHAEOLOGICAL SURVEY OFFICE ON MARCH 25, WE WERE TOLD THAT EXPORT OF ANTIQUES, REGARDLESS OF ORIGIN OR DESTINATION, IS BANNED UNDER THE ANTIQUITY EXPORTS CONTROL ACT OF 1947/72 AND THAT THE GOI INTERPRETS THIS TO APPLY TO ALL ANTIQUES TRANSITING INDIA. IT IS NOT A MATTER OF THE GOI SUSPECTING THAT ANTIQUES MAY

BE OF INDIAN ORIGIN OR ASSUMING "DISCRETIONARY" POWER OVER WHAT THE NEPALESE GOVERNMENT MAY EXPORT, BUT EXTENDS TO ALL ANTIQUES WITHIN INDIA, INCLUDING TRANSHIPMENTS, REGARDLESS OF NATIONALITY. IN JUSTIFICATION OF THIS POSITION, MR. BISWAS SAID THAT THE GOI WAS IMPLY RESPONDING TO VARIOUS INTERNATIONAL CONVENTIONS EMPOWERING GOVERNMENTS TO INTERCEPT THE FLOW OF ILLICIT TRADE IN ANTIQUES.

5. COMMENT: IT APPEARS THAT WE CAN EXPECT CONTINUING DIFFICULTIES REGARDING TRANSHIPMENT OF ANTIQUES, REGARDLESS OF ORIGIN, DESTINATION, OR NON-GOI CERTIFICATIONS FOR EXPORT. THIS IS LIKELY TO BE ESPECIALLY TRUE IN CASE OF ANTIQUES FROM NEPAL. AVENUES DO EXIST FOR APPEALING THE RELEASE OF ANTIQUES CONFISCATED BY THE GOI, BUT OUR RECENT DISCUSSIONS WITH OFFICIALS HERE LEAVE US WITH IMPRESSION THAT ANY RULING IS LIKELY TO BE ARBITRARY AT BEST. BELIEVE U.S. CITIZENS AND BUSINESS REPS PLANNING TO SHIP FROM NEPAL VIA CALCUTTA (OR PRESUMABLY VIA ANY OTHER POINT IN INDIA) ANYTHING THAT MIGHT BE CLASSIFIED AS "ANTIQUE" SHOULD BE ADVISED OF FOREGOING.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 08 APR 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976CALCUT00869
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760132-0766
From: CALCUTTA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760484/aaaacttn.tel
Line Count: 135
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION NEA
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 HONG KONG 2087, 76 CALCUTTA 617, 76 CALCUTTA 643
Review Action: RELEASED, APPROVED
Review Authority: MartinML
Review Comment: n/a
Review Content Flags:
Review Date: 15 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <15 JUN 2004 by SilvaL0>; APPROVED <04 JAN 2005 by MartinML>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: TRANSHIPMENT OF ARTIFACTS FROM NEPAL
TAGS: BDIS, IN
To: COM
KATHMANDU
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006